

Request for City Council Action

Date: May 6, 2002

To: Council Member Lisa Goodman, Community Development Committee

Prepared by Willie Adams, Financial Analyst II, Phone 612-673-5066

Approved by Chuck Lutz, MCDA Interim Executive Director _____

Subject: Request for Public Hearing, Preliminary and Final Approval of up to \$8,000,000 in Tax-exempt Revenue Bonds for the 501(c)(3) Non-profit Organization, the University Gateway Corporation Project Series 2002, to be issued through the City of Minneapolis.

Previous Directives: Project received final approval at the November 21, 1997 City Council meeting.

Ward: 2

Neighborhood Group Notification: University of Minnesota Neighborhood and Prospect Park/East River Road Improvement Association.

Consistency with *Building a City That Works*: This project is consistent with:

Goal 1: Increase economic competitiveness and extend the benefits of the growing economy to all Minneapolis residents.

Objective B: Attract and expand new and existing services, infrastructure, development and employers that position Minneapolis and the region to compete in the economy of the 21st century.

Goal 5: Participate in partnership to achieve common community development objectives.

Objective B: Strengthen our participation in existing partnerships and act as a catalyst to form new partnerships.

Comprehensive Plan Compliance: Project is in compliance with the City's Comprehensive Plan.

Zoning Code Compliance: The project is zoned R6 which is the zoning category applicable to the traditional University of Minnesota campus. The official land use plan for the City of Minneapolis indicates that this area is designated for institutional uses, such as the University of Minnesota. The zoning code permits educational uses in the R6 zone and; therefore, the land use plan is in compliance with the zoning code. Where a University project is in compliance with the land use plan and the zoning district designation, the City of Minneapolis has used a balancing of interest test to determine that the University of Minnesota does not need to go through formal zoning code compliance review. Based on the current understanding of the nature and location of this project, a formal zoning code compliance review is not required.

Impact on the MCDA Budget:

- ☐ No financial impact
- ☐ Action requires an appropriation increase to the MCDA Budget
- ☐ Action provides increased revenue for appropriation increase
- ☐ Action requires use of contingency or reserves
- ☒ Other financial impact (Explain): The issuance of revenue bonds will generate \$20,000 annually in administrative fees to support the small business loan programs of the MCDA.

Living Wage/Business Subsidy: Business Subsidy and Living Wage does not apply to projects that receive funds from bonds allocated under Minnesota Statutes 474A 501(c)(3) bonds.

Job Linkage: Does not apply. Community Development is the primary development objective.

Affirmative Action Compliance: Pending review by Affirmative Action Office. Will be completed prior to closing.

RECOMMENDATION:

City Council Recommendation: The Interim Executive Director recommends that the City Council adopt the attached Resolution, a summary of which will be published following a Public Hearing held on May 6, 2002 notice of which was published in Finance and Commerce on April 20, 2002, giving Preliminary and Final Approval to the issuance of a up to \$8,000,000 in Tax-exempt Revenue Bonds for University Gateway Corporation, Series 2002.

Background/Supporting Information

PROJECT LOCATION & DESCRIPTION: The McNamara Alumni Center University of Minnesota Gateway is located at 200 Oak Street SE in Minneapolis, MN. The center is a 230,000 square foot, six-story visitor and alumni center and office building. The facility is currently owned and managed by the University Gateway Corporation

The University Gateway Corporation is a Minnesota nonprofit corporation formed in 1997 for the purpose of development, construction and management of the McNamara Alumni Center University of Minnesota Gateway facility. The corporation was formed by the University of Minnesota Foundation, the University of Minnesota Alumni Association, and the Minnesota Medical Foundation.

The proceeds of the 2002 Bonds will be used to pay for additional enhancements to the McNamara Alumni Center University of Minnesota Gateway facility and a new plaza adjacent to the facility to be donated to the University of Minnesota. The plaza installation will include various landscaping amenities and public space enhancements.

TYPE OF FINANCING:

The McNamara Alumni Center University of Minnesota Gateway Project will be financed through the issuance of up to \$8,000,000 in 501(c)(3) tax-exempt bonds. The bonds will be rated by one of the major bond rating agencies. The bonds are expected to have a minimum A rating and will be sold to institutional and retail buyers.

The 2002 bonds will be issued on a parity basis with the 1997 bonds. The bonds will be secured by the following:

- a) An assignment of the Loan Agreement and all of the payments to be made by the corporation under the Loan Agreement.
- b) A security interest in all moneys held by the Trustee in all funds and accounts (except the rebate Fund)
- c) A First Assignment of Leases of the Facility and all rents payable thereunder. The assignment of rents includes rents, profits, and other income or revenue of any kind which shall accrue to be owing for the use or occupation of the facility.
- d) A first mortgage lien on the facility and on the corporation leasehold interest in the real estate and a security interest in certain personal property.

Sources:

Series 2002 Bonds	\$8,000,000
Total Sources	\$8,000,000

Uses:

Building Enhancements to McNamara Alumni Center	\$4,000,000
Tenant Improvements	1,340,000
Plaza Installation	2,500,000
Costs of Issuance	160,000
Total Uses	\$8,000,000

PRESENT EMPLOYMENT:

University Gateway Corporation does not employ anyone. It is an owner of the facility; however, the tenants in the building collectively employ 775 in the McNamara Alumni Center University of Minnesota Gateway.

ASSESSOR'S ESTIMATED
ANNUAL TAX INCREASE:

Tax-exempt facility

AFFIRMATIVE ACTION COMPLIANCE:

Pending review by Affirmative Action Office. Will be completed prior to closing

MCDA IRB POLICIES:

Job Component

Minimum standard of one (1) job per 1,000 square feet of building area.

McNamara Alumni Center University of Minnesota Gateway Project: The facility has 3.3 jobs per 1,000 square feet of building area.

Property Improvements

No more than 25% of the bond proceeds may be used for land and acquisition. If purchasing an existing building, an amount equal to at least 15% of the acquisition cost must be spent on rehabilitation expenditures.

McNamara Alumni Center University of Minnesota Gateway Project: The majority of bond proceeds will be used for the rehabilitation and new construction.

Development Standards

Compliance with the Land Use Plan of the City's Comprehensive Plan.

McNamara Alumni Center University of Minnesota Gateway Project: See discussion of Zoning Code Compliance on Page one.

Equipment Financing

Limited to companies that create or preserve a significant number of jobs, and the equipment financed must be sufficiently secured. No more than 10% of the bond proceeds may be used to finance movable equipment not constituting a fixture.

McNamara Alumni Center University of Minnesota Gateway Project: N.A.

Restaurant/Bank

IRB financing is allowed for a restaurant or a bank if it is built or rehabilitated in an MCDA Redevelopment Area. No more than 25% of the bond proceeds can be used to finance retail food and beverage establishments, automobile dealerships or recreation or entertainment facilities.

McNamara Alumni Center University of Minnesota Gateway Project: N.A.

Tax-exempt Institution

Refinancing is permitted when new jobs are created or when a significant number of jobs are preserved; any interest cost savings must directly reduce patient costs.

McNamara Alumni Center University of Minnesota Gateway Project: N.A.

IRB CAP:

The project is not subject to the volume cap, in that the project is exempt from income tax under Internal Revenue Code Section 501(c)(3) for its exempt purposes and is classified thereunder as a non-profit organization.

BOND COUNSEL:

Kennedy & Graven

UNDERWRITER:

RBC Dain Rauscher, Inc.

Authorizing the issuance and sale of, and providing the form, terms, pledge of revenues, findings, covenants, and directions relating to, the Variable Rate Demand Revenue Bonds (University Gateway Project), Series 2002, under Minnesota Statutes, Sections 469.152-469.165, as amended, to be issued to finance additional improvements to an office building and adjacent site located on the Minneapolis campus of the University of Minnesota

Now, therefore, be it resolved by the City Council of the City of Minneapolis

Section 1. Background

1.01. Statutory Authorization. The City of Minneapolis, Minnesota (the “City”), is a home rule city and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, and is authorized by Minnesota Statutes, Sections 469.152-469.165, as amended (the “Act”), to issue revenue bonds to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of a “project,” defined in the Act as any properties, real or personal, used or useful in connection with a revenue producing enterprise, for the public purposes expressed in the Act.

1.02. The Corporation and the Facility. The University of Minnesota Foundation (the “University Foundation”), the University of Minnesota Alumni Association (the “Alumni Association”), and the Minnesota Medical Foundation (the “Medical Foundation”) jointly established the University Gateway Corporation, a Minnesota nonprofit corporation (the “Corporation”) in 1997, and received a determination from the Internal Revenue Service that the Corporation is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (the “Code”), as a result of the application of Section 501(c)(3) of the Code. The Corporation was formed for the purpose of developing a six-story office building and related improvements (the “Facility”) to be located on the Minneapolis campus of the University of Minnesota.

1.03. The Series 1997 Bonds. The costs of the construction and development of the Facility were financed by the City through the issuance of its: (i) Revenue Bonds (University Gateway Project), Series 1997-A (the “Series 1997-A Bonds”), in the original aggregate principal amount of \$25,000,000; and (ii) Variable Rate Demand Revenue Bonds (University Gateway Project), Series 1997-B (the “Series 1997-B Bonds”), in the original aggregate principal amount of \$15,000,000 (the Series 1997-A Bonds and the Series 1997-B Bonds are hereinafter referred to collectively as the “Series 1997 Bonds”). The Series 1997 Bonds were issued pursuant to Resolution No. 97R-358, adopted by the City Council of the City and approved by the Mayor of the City on November 21, 1997, and pursuant to an Indenture of Trust, dated as of December 1, 1997 (the “Indenture”),

between the City and a predecessor to U.S. Bank National Association, as trustee (the "Trustee"). The proceeds derived from the sale of the Series 1997 Bonds were loaned to the Corporation pursuant to the terms of a Loan Agreement, dated as of December 1, 1997 (the "Loan Agreement"), between the City and the Corporation. The Corporation applied the proceeds of the loan to the development and construction of the Facility.

1.04. The Facility. The development and construction of the Facility has been completed. The Facility, designated the McNamara Alumni Center — University of Minnesota Gateway, contains approximately 230,000 square feet of interior space and houses the offices for the University Foundation, the Alumni Association, and the Medical Foundation. The Facility serves as an alumni/visitor center for the University of Minnesota and a portion of the office space of the Facility is leased to the University of Minnesota. The Facility is owned and operated by the Corporation.

1.05. The Project. The Corporation has undertaken additional enhancements to the Facility and is constructing a plaza adjacent to the Facility to be donated to the University of Minnesota (collectively, the "Project"). The Corporation has proposed to the City that the City assist the Corporation in the financing or refinancing of the costs of the Project through the issuance of additional bonds pursuant to the terms of the Indenture and, pursuant to an amendment to the Loan Agreement, through a loan of the proceeds of the additional bonds to the Corporation.

1.06. The Series 2002 Bonds. The Corporation has requested that the City issue its Variable Rate Demand Revenue Bonds (University Gateway Project), Series 2002 (the "Series 2002 Bonds" or the "Bonds"), in an original aggregate principal amount not to exceed \$8,000,000. The Series 2002 Bonds are to be issued as parity obligations with the Series 1997 Bonds pursuant to the terms and conditions of a Supplemental Indenture Number One, to be dated on or after June 1, 2002 (the "Supplemental Indenture"), between the City and the Trustee. The Series 2002 Bonds are proposed to be sold pursuant to the terms of a Bond Purchase Agreement (the "Purchase Agreement") between the City, the Corporation, and RBC Dain Rauscher and Wells Fargo Brokerage Services, LLC. (the "Underwriters"). The proceeds derived from the sale of the Series 2002 Bonds will be loaned to the Corporation under the terms of an Amendment Number One to Loan Agreement, to be dated on or after June 1, 2002 (the "Amendment"), between the City and the Corporation. The Corporation will direct the application of the proceeds of the loan made pursuant to the Amendment (the "Loan") to pay or reimburse the costs of the Project. The repayment of the Loan and the payment of the principal and purchase price of, premium, if any, and interest on the Bonds are to be secured by an Amendment to Mortgage and Security Agreement, to be dated on or after June 1, 2002 (the "Mortgage Amendment"), between the Corporation and the Trustee, and an Amendment to Assignment of Leases and Rents, to be dated on or after June 1, 2002 (the "Assignment Amendment"), between the Corporation and the Trustee. The loan repayments required to be made by the Corporation under the terms of Amendment will be assigned to the Trustee under the terms of the Supplemental Indenture. The payment of the principal of, premium, if any, and interest on the Series 2002 Bonds (as well as the Series 1997 Bonds) will also be secured under the terms of an Amended and Restated Guaranty Agreement, to be dated on or after June 1, 2002 (the "Amended Guaranty"), to be executed by the University Foundation and delivered to the Trustee for the benefit of the owners of the Series 2002 Bonds (as well as the Series 1997 Bonds) and the Bank (as hereinafter defined).

1.07. Liquidity for the Series 2002 Bonds. The Series 1997-B Bonds were issued as variable-rate obligations each of which is required to be purchased from the holder upon seven days notice. In order to ensure the holders that the Series 1997 Bonds are purchased upon demand of the holders, the Corporation and the Guarantor entered into a Standby Bond Purchase Agreement, dated as of December 1, 1997 (the "Standby Purchase Agreement"), with a predecessor to Wells Fargo Bank Minnesota National Association, a national

banking association (the “Bank”). Under the terms of the Standby Purchase Agreement, the Bank is obligated, under certain conditions, to purchase any Series 1997 Bond which cannot be remarketed prior to the purchase date. The Series 2002 Bonds are also proposed to be issued as variable-rate obligations each of which is required to be purchased from the holder upon seven days notice. In order to ensure that the Series 2002 Bonds will be purchased upon demand of the holders, the Corporation and the Guarantor will enter into an Amended and Restated Standby Bond Purchase Agreement, dated on or after June 1, 2002, or an amendment to the Standby Purchase Agreement (the “Amended Standby Purchase Agreement”), with the Bank. Under the terms of the Amended Standby Purchase Agreement, the Bank will be obligated, under certain conditions, to purchase any Series 2002 Bond which cannot be remarketed prior to the purchase date. The remarketing of Series 2002 Bonds that are required to be purchased will be undertaken pursuant to the provisions of an Amended and Restated Remarketing Agreement, dated as of June 1, 2002 (the “Amended Remarketing Agreement”), between the City, the Trustee, the Corporation, and the Underwriters.

1.08. Documents. Forms of the following documents have been submitted to the City and are now on file with the City Clerk: (i) the Amendment; (ii) the Supplemental Indenture; (iii) the Mortgage Amendment; (iv) the Assignment Amendment; (v) the Amended Guaranty; (vi) the Purchase Agreement; (vii) the Amended Standby Purchase Agreement; and (viii) the Amended Remarketing Agreement.

Section 2. Issuance of Bonds

2.01. Findings. The City Council hereby finds, determines, and declares that:

(a) The issuance and sale of the Series 2002 Bonds, the execution and delivery by the City of the Amendment, the Supplemental Indenture, the Purchase Agreement, and the Amended Remarketing Agreement, and the performance of all covenants and agreements of the City contained in Amendment, the Supplemental Indenture, the Purchase Agreement, and the Amended Remarketing Agreement are undertaken pursuant to the Act.

(b) The Project furthers the purposes stated in Section 469.152 of the Act and constitutes a “project,” as defined in Section 469.153, subdivision 2(b), of the Act.

(c) The loan repayments to be made by the Corporation under the Amendment are fixed to produce revenue sufficient to provide for the prompt payment of the principal of, premium, if any, and interest on the Series 2002 Bonds issued under the Supplemental Indenture when due, and the Amendment and the Supplemental Indenture also provide that the Corporation is required to pay all expenses of the operation and maintenance of the Project, including, but without limitation, adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof, and all lawfully imposed taxes and special assessments levied upon or with respect to the Project and payable during the term of Amendment and the Supplemental Indenture.

(d) As provided in the Amendment and the Supplemental Indenture, the Series 2002 Bonds shall not be payable from or charged upon any funds other than the revenue pledged to their payment, nor shall the City be subject to any liability thereon, except as otherwise provided in this paragraph. No holder of any Series 2002 Bonds shall ever have the right to compel any exercise by the City of its taxing powers to pay any of the Series 2002 Bonds or the interest or premium thereon, or to enforce payment thereof against any property of the City except the interests of the City in the Amendment, assigned to the Trustee under the Supplemental Indenture. The Series 2002 Bonds shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City, except the interests of the City in the Amendment. The Series 2002 Bonds shall recite that the

Series 2002 Bonds are issued pursuant to the Act, and that the Series 2002 Bonds, including interest and premium, if any, thereon, are payable solely from the revenues and assets pledged to the payment thereof, and the Series 2002 Bonds shall not constitute a general or moral obligation of the City or a debt of the City within the meaning of any constitutional or statutory limitation.

2.02. Sale of the Series 2002 Bonds. The City hereby authorizes the issuance of the Series 2002 Bonds, in the principal amount, in the form, and upon the terms and conditions set forth in the Supplemental Indenture. The aggregate principal amount of the Series 2002 Bonds, the principal amount of Series 2002 Bonds maturing on each maturity date, the interest rates of the Series 2002 Bonds for each maturity date, the date of the documents referenced in this resolution and the Series 2002 Bonds, and the terms of redemption of the Series 2002 Bonds may be established or modified with the approval of the City. The execution and delivery of the Series 2002 Bonds shall be conclusive evidence that the City has approved such terms as subsequently established or modified. The Series 2002 Bonds are hereby designated "Program Bonds" and are determined to be within the "Economic Development Program" and the "Program," all as defined in Resolution 88R-021 of the City adopted January 29, 1988, and as amended by Resolution 97R-402 of the City adopted December 12, 1997. The offer of the Underwriters to purchase the Series 2002 Bonds as provided in the Purchase Agreement at the price established under the terms of the Purchase Agreement plus accrued interest to the date of delivery at the interest rate or rates specified in the Supplemental Indenture is hereby accepted. The Mayor, City Clerk, and Finance Officer are authorized and directed to prepare and execute the Series 2002 Bonds, by manual or facsimile signatures, as prescribed in the Supplemental Indenture and the Series 2002 Bonds shall be delivered to the Trustee for authentication and delivery to the Underwriters. The Finance Officer is hereby authorized to execute and deliver any agreements with any depository institution, including any representation letter or amendment to any existing representation letter, to provide for the registration of the Series 2002 Bonds in book-entry form.

2.03. Approval of Documents. The Amendment, the Supplemental Indenture, the Mortgage Amendment, the Assignment Amendment, the Amended Guaranty, the Purchase Agreement, the Amended Standby Purchase Agreement, and the Amended Remarketing Agreement are hereby approved in substantially the form on file with the City on the date hereof. The terms of the Amendment, the Supplemental Indenture, the Mortgage Amendment, the Assignment Amendment, the Amended Guaranty, the Purchase Agreement, the Amended Standby Purchase Agreement, and the Amended Remarketing Agreement may be modified with the approval of the City. The Mayor, City Clerk, and Finance Officer are authorized and directed to execute and deliver the Amendment, the Supplemental Indenture, the Purchase Agreement, and the Amended Remarketing Agreement (the "City Documents"). The execution and delivery of the City Documents shall be conclusive evidence that the City has approved the terms of the City Documents as established or modified. Copies of all City Documents and all other documents necessary to the transaction herein described shall be delivered, filed and recorded as provided herein and the Amendment and the Supplemental Indenture.

2.04. Disclosure Documents. The City consents to the distribution of a Preliminary Official Statement and an Official Statement prepared by the Underwriters with respect to the issuance of the Series 2002 Bonds. The Preliminary Official Statement and the Official Statement shall recite that the City has not participated in the preparation of the Official Statement nor made any independent investigation of the information contained in the Official Statement, and the City takes no responsibility for the sufficiency, accuracy or completeness of such information. The City hereby approves the execution and delivery of a Continuing Disclosure Agreement or an Amendment to Continuing Disclosure Agreement, to be dated on or after June 1, 2002 (the "Continuing Disclosure Agreement"), between the Corporation, the Guarantor and the Trustee, pursuant to which the Corporation and the Guarantor agree to meet certain continuing disclosure obligations imposed by Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the

“Rule”). The Corporation, the Guarantor, and the Trustee shall acknowledge in the Continuing Disclosure Agreement that the City has undertaken no responsibilities with respect to any reports, notices, or disclosures required under the Continuing Disclosure Agreement or the Rule.

2.05. Certifications of the City. The Mayor, City Clerk, Finance Officer, and other officers, employees, and agents of the City are hereby authorized and directed to prepare and furnish to bond counsel, the Underwriters, and the Trustee certified copies of all proceedings and records of the City relating to the issuance of the Series 2002 Bonds including a certification of this resolution. Such officers, employees, and agents are hereby authorized to execute and deliver, on behalf of the City, all other certificates, instruments, and other written documents that may be requested by bond counsel, the Underwriters, the Trustee, or other persons or entities in conjunction with the issuance of the Series 2002 Bonds. Without imposing any limitation on the scope of the preceding sentence, such officers, employees, and agents are specifically authorized to execute and deliver one or more financing statements, an arbitrage and rebate certificate, a receipt for the proceeds derived from the sale of the Series 2002 Bonds, an order to the Trustee as to the application of the proceeds of the Series 2002 Bonds, a general certificate of the City, and an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038.

Section 3. Miscellaneous

Section 3.01. Agreements Binding. All agreements, covenants, and obligations of the City contained in this resolution and in the above-referenced documents shall be deemed to be the agreements, covenants, and obligations of the City to the full extent authorized or permitted by law, and all such agreements, covenants, and obligations shall be binding on the City and enforceable in accordance with their terms. No agreement, covenant, or obligation contained in this resolution or in the above-referenced documents shall be deemed to be an agreement, covenant, or obligation of any member of the City Council, or of any officer, employee, or agent of the City in that person’s individual capacity. Neither the members of the City Council, nor any officer or employee of the City executing the Series 2002 Bonds, shall be liable personally on the Series 2002 Bonds or be subject to any personal liability or accountability by reason of the issuance of the Series 2002 Bonds.

3.02. Rights Conferred. Nothing in this resolution or in the above-referenced documents is intended or shall be construed to confer upon any person (other than as provided in the Supplemental Indenture and the other agreements, instruments, and documents hereby approved) any right, remedy, or claim, legal or equitable, under and by reason of this resolution or any provision of this resolution.

3.03. Validity. If for any reason the Mayor, City Clerk, Finance Officer, or any other officers, employees, or agents of the City authorized to execute certificates, instruments, or other written documents on behalf of the City shall for any reason cease to be an officer, employee, or agent of the City after the execution by such person of any certificate, instrument, or other written document, such fact shall not affect the validity or enforceability of such certificate, instrument, or other written document. If for any reason the Mayor, City Clerk, Finance Officer, or any other officers, employees, or agents of the City authorized to execute certificates, instruments, or other written documents on behalf of the City shall be unavailable to execute such certificates, instruments, or other written documents for any reason, such certificates, instruments, or other written documents may be executed by a deputy or assistant to such officer, or by such other officer of the City as in the opinion of the City Attorney is authorized to execute such certificates, instruments, or other written documents.

3.04. Effective Date. This resolution shall take effect and be in force from and after its approval and publication.

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